IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

Crl.MC.No. 343 of 2007()

CMP.3759/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY

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PETITIONER/ACCUSED:

USSAIN LIYAKATH ALI, S/O. MUHAMMED HAJI,
NEELESWARAM AMSOM, POOLAPPOYIL DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT/ COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI S.U. NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.343 of 2007

Dated this the 21st day of February, 2007

ORDER

The petitioner claims to be the owner under an agreement of a Mahindra Nissan vehicle bearing Reg.No.KL-9-6168. The same was seized by the police on the allegation that it was used for transportation of sand. The petitioner applied for release of the vehicle and the learned Magistrate directed release of the vehicle subject to conditions, which include a condition that the petitioner must produce documents to show that he is the owner of the vehicle. The petitioner produced documents. The petitioner is not the registered owner. He is unable to produce any agreement executed by the registered owner in favour of himself or any other. The learned Magistrate, in these circumstances, justifiably according to me, was not prepared to accept and act upon the documents produced. The learned Magistrate wanted notice to be issued to the registered owner to ascertain the truth. The registered owner has not so far personally appeared before the learned Magistrate. The petitioner therefore finds himself in a quandary. According to him, he is the owner and is entitled to possession of the vehicle. The registered owner, for reasons best known to him, is making himself scarce and is not choosing to appear before the learned Magistrate in person. The

learned Magistrate is not accepting appearance of the registered owner through counsel. The petitioner is the sufferer, as he is not able to get back his vehicle from court.

2. I am unable to agree that the course followed by the learned Magistrate, can in any way, be faulted. Genuine apprehensions appear to be troubling the learned Magistrate. The learned counsel for the petitioner, in these circumstances, makes a different and alternative prayer before this Court. He prays that the learned Magistrate may be directed to return the documents produced by the petitioner before the learned Magistrate. He shall ensure that the transfer is endorsed in the registration certificate so that the registration certificate can itself be produced before the learned Magistrate to prove that he is owner of the vehicle.

3. The said course suggested by the petitioner does appear to me to be reasonable. This Crl.M.C is, in these circumstances, dismissed. The learned Magistrate shall return the documents produced by the petitioner to the petitioner. The petitioner shall be at liberty to produce the registration certificate to satisfy the learned Magistrate that his name has been entered as the registered owner of the vehicle in the registration certificate later. The learned Magistrate shall pass appropriate orders on the basis of such documents that may later be produced.

4. Hand over a copy of this order to the learned counsel for the petitioner forthwith for production before the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-